

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

AMERICAN PETROLEUM
INSTITUTE and NATIONAL
PETROCHEMICAL AND REFINERS
ASSOCIATION,

Plaintiffs,

v.

ROY A. COOPER, III, ATTORNEY
GENERAL OF THE STATE OF
NORTH CAROLINA,

Defendant,

and

NORTH CAROLINA PETROLEUM
AND CONVENIENCE MARKETERS
ASSOCIATION,

JUDGMENT

No. 5:08-CV-396-FL

Decision by Court.

This action came before the Honorable Louise W. Flanagan, United States District Judge, for consideration of the plaintiffs' motion for summary judgment, filed October 2, 2008 and revised May 8, 2009; the defendant and intervenor-defendants' cross-motions for summary judgment in corresponding parts filed May 22, 2009; defendant's motion for dismissal of plaintiffs' as-applied challenges on ripeness grounds also filed May 22, 2009; and, defendant's and intervenor-defendant's motions for summary judgment, filed August 29, 2011.

IT IS ORDERED, ADJUDGED AND DECREED, in accordance with the court's orders entered January 27, 2010 and December 16, 2011, and for the reasons set forth more specifically therein, that:

(1) Plaintiffs' motion for summary judgment, as revised, is denied. [DE ## 10, 40].

(2) Defendant's and intervenor-defendant's cross-motions for summary judgment in corresponding parts are allowed. [DE ## 42, 44]. These motions are granted specifically as they relate to plaintiffs' facial challenges with regards to the federal renewable fuels program based on obstacle preemption of the program's goals and flexibility, the PMPA based on express preemption under a "failure to comply with reasonable contractual provisions" theory, the Lanham Act, and

facial invalidity under the Commerce Clause.

(3) Defendant's motion for dismissal of plaintiffs' as-applied challenges on ripeness grounds is dismissed as moot. [DE # 42].

(4) Defendant's and intervenor-defendant's motions for summary judgment as to the plaintiffs' as-applied challenge are granted. [DE ## 84, 86].

This Judgment Filed and Entered on December 16, 2011, and Copies To:

Burley Bayard Mitchell, Jr. (via CM/ECF Electronic Notice of Filing)

Pressly M. Millen (via CM/ECF Electronic Notice of Filing)

Robert T. Numbers, II (via CM/ECF Electronic Notice of Filing)

Alexander McClure Peters (via CM/ECF Electronic Notice of Filing)

Mark Allen Davis (via CM/ECF Electronic Notice of Filing)

Melissa L. Trippe (via CM/ECF Electronic Notice of Filing)

A. Bartlett White (via CM/ECF Electronic Notice of Filing)

Charles F. Marshall, III (via CM/ECF Electronic Notice of Filing)

Eric M. David (via CM/ECF Electronic Notice of Filing)

December 16, 2011

DENNIS P. IAVARONE, CLERK

/s/ Christa N. Baker

(By) Christa N. Baker, Deputy Clerk